

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7565

BILL NUMBER: HB 1484

NOTE PREPARED: Jan 7, 2003

BILL AMENDED:

SUBJECT: Indecent Exposure.

FIRST AUTHOR: Rep. Stilwell

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- 1) It makes it public indecency, a Class A misdemeanor, for a person to appear nude in a public place: (1) with the intent to arouse the sexual desires of the person or another person; or (2) who is at least 18 years of age and has the intent to be seen by a child less than 16 years of age.
- 2) It increases the penalty if the person has a prior unrelated conviction for public indecency.
- 3) It makes it indecent exposure, a Class C misdemeanor, for a person to appear nude in a nonpublic place with the intent to be seen by persons other than invitees or occupants of that place.
- 4) It makes it public nudity, a Class C misdemeanor, for a person to appear nude in a public place.
- 5) It increases the penalty if the person intends to be seen by another person.
- 6) It provides that a person may be sentenced as a habitual petty offender if the person is convicted of a felony or Class A misdemeanor and has two prior unrelated convictions for a felony or Class A misdemeanor within the five years preceding the underlying offense.
- 7) It provides that a person found to be a habitual petty offender will receive an additional fixed term that is not less than one year if the crime is a misdemeanor, or less than the presumptive sentence for the underlying offense if the underlying offense is a felony.
- 8) It specifies the additional fixed term may not exceed three years if the offense is a misdemeanor and may not exceed three times the presumptive sentence if the offense is a felony.
- 9) It specifies the maximum additional term a person may receive is five years.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Public Indecency:* Under current law, public indecency is a Class A

misdeemeanor, but it is enhanced to a Class D felony if (1) the offender intends to arouse sexual desires in a public place where a child less than 16 years old is present, (2) the offense takes place in or on school property and the offender has a prior conviction, or (3) the offense takes place on Department of Natural Resources property and the offender has a prior conviction. The bill would add to the definition of the Class A misdemeanor appearing in a state of nudity to arouse sexual desires, or appearing in a state of nudity with the intent to be seen by a child less than 16 years of age, if the offender is at least 18 years old. It would eliminate the current conditions for a Class D felony and would instead apply a Class D felony to an offender who has a prior unrelated conviction. There are no data available to indicate if additional offenders would be convicted of these offenses, given the changes in definitions. In FY 2001, there were 2 people committed to Department of Correction facilities for Class D felony public indecency.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Habitual Petty Offenders: If an offender is found to be a habitual petty offender, the court must add an additional, fixed-term sentence of not less than one year or more than three years for a Class A misdemeanor. The additional fixed term for a felony offense would be the presumptive sentence for the underlying felony, or not more than three times the presumptive sentence or 5 years, which ever is less. To the extent that habitual petty offenders may serve a longer period of incarceration, or be transferred to the jurisdiction of the state rather than incarcerated in county jails, costs for the Department of Correction would increase. There are no data available to indicate how many people may be convicted as habitual petty offenders.

Explanation of State Revenues: *Public Indecency:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000 and the maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Indecent Exposure and Public Nudity: The bill adds to the definition of Class C misdemeanor indecent exposure, appearing in a state of nudity. Also, the bill would create a new Class B misdemeanor for knowingly or intentionally appearing in a state of nudity in a public place.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C misdemeanor is \$500, and the maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings for a Class D felony, local expenditures for jail operations may increase. Additionally, a Class A

misdemeanor is punishable by up to one year in jail, a Class B misdemeanor is punishable by a up to 180 days in jail, and a Class C misdemeanor is punishable by up to 60 days in jail. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.

Fiscal Analyst: Karen Firestone, 317-234-2106